



# CALIFORNIA High-Speed Rail Authority

## **Agreement No.: HSR [•]**

**Tier III Trainsets**

**California High-Speed Rail Program**

**Trainset Contract Term Sheet**

This document provides background information and summarizes certain terms in the California High-Speed Rail Authority's draft contract to be included in the Request for Proposals ("RFP") for the trainset procurement. This document is not a full restatement of the contract requirements. There are numerous details, exceptions and qualifications associated with the provisions of the contract that can only be ascertained by reviewing the contract.

This document is subject to revision and provided as a reference document in the Early Train Operator RFP. Dates and information listed in brackets are for discussion purposes only.

1. Contract Overview	
<b>Authority</b>	California High-Speed Rail Authority
<b>Contractor</b>	The entity identified as “Contractor” in the Signature Document and determined through the Trainset procurement.
<b>Contract / Order of Precedence</b>	<p>The Contract will include the following documents, in the following descending order of precedence:</p> <ol style="list-style-type: none"> <li>1. Signature Document, except Proposal commitments</li> <li>2. General Provisions without Schedules</li> <li>3. Performance Specification (Schedule 1 to General Provisions)</li> <li>4. All other Schedules to General Provisions</li> <li>5. Proposal, including Proposal commitments (provided that if Authority determines that the Proposal contains a provision that is more restrictive / beneficial to the Authority than is specified elsewhere in the Contract, that Proposal provision will take precedence).</li> </ol>
<b>Federal Requirements</b>	The Contract assumes federal requirements will apply, including Buy America, that are related to the American Recovery and Reinvestment Act (ARRA), Passenger Rail Investment and Improvement Act (PRIIA), Railroad Rehabilitation & Improvement Financing (RRIF) Program and Transportation Infrastructure Finance and Innovation Act (TIFIA).
<b>Small and Disadvantaged Business Enterprise Program</b>	Contractor will comply with the Authority's Small and Disadvantaged Business Enterprise Program.
<b>Community Benefits Agreement</b>	With respect to the construction of any Maintenance Facilities on Authority-Provided Property, Contractor and its Subcontractors will comply with the Community Benefits Agreement with the State Building and Construction Trades Council of California and the Signatory Craft Councils and Local Unions.
<b>Labor and Employment</b>	<p>Contractor, as part of its Proposal, will be required to describe its approach to developing a skilled labor force for the manufacturing and maintenance periods of the Contract.</p> <p>Contractor will also be required to disclose, as part of its Proposal, whether there have been any complaints or charges filed against it within the preceding three year period for violations of various employment and labor laws and Executive Orders.</p>
2. Authority Obligations	
<b>Fleet Orders</b>	<p>The Authority is obligated to buy Fleet 1 which totals 16 Trainsets (2 prototype Trainsets and 14 production Trainsets).</p> <p>The Authority may, in its discretion, order up to 79 optional Trainsets (for a maximum total order of 95 Trainsets) in one or more additional Fleets, provided that a Fleet will have a minimum of five Trainsets if Trainset production has been shut down.</p>
<b>Test Track</b>	The Authority will provide Contractor with access to the Test Track by 48 months after Notice to Proceed.

<b>Track Connectivity</b>	The Authority will provide connectivity between the Northern and Central Valley segments by [December 31, 2024]. The Authority intends to provide connectivity between the Central Valley and Southern segments by [December 31, 2029], and will provide 48 months advance notice.
<b>Signaling and Communications Systems</b>	The Authority will provide characteristics of its mainline signaling and communications systems by [24] months after Notice to Proceed.
<b>Authority-Provided Property</b>	The Authority will provide Contractor with property by specified deadlines for Contractor to construct specified Maintenance Facilities needed to perform the required Trainset maintenance.
<b>Freight Rail Connection</b>	The Authority will provide Contractor with a freight rail connection on each Authority-Provided Property by specified deadlines.
<b>Transfer Track</b>	On each Authority-Provided Property, the Authority will provide track and mainline signaling and communication systems for a Transfer Track.
<b>Non-Maintenance Layover Area</b>	The Authority will provide an Authority-owned site where Trainsets can be stabled and light cleaning can be performed in the Northern segment.
<b>3. Payment</b>	
<b>Contract Amount</b>	The Contract Amount is based on: 1. Manufacturing Amount for each Fleet; 2. Maintenance Facility Amount; 3. Service Payment; and 4. Trainset Mid-Life Overhaul (MLO) Amount for each Fleet.
<b>Manufacturing Amount</b>	The Authority will pay the Manufacturing Amount for each Fleet it orders through the use of milestone payments upon 100% completion of each defined milestone. The Manufacturing Amount for Fleet 1 is bid by Contractor. The Manufacturing Amount for any subsequent Fleet is based on the Trainset unit prices bid by Contractor for these Fleets multiplied by the number of Trainsets in the Fleet. The Manufacturing Amount for each Fleet is subject to escalation, except if the Authority orders a Fleet after [December 31, 2030], the Manufacturing Amount for that Fleet is subject to negotiation.
<b>Maintenance Facility Amount</b>	The Authority will pay the Maintenance Facility Amount through the use of milestone payments upon 100% completion of each defined milestone. The Maintenance Facility Amount is bid by Contractor.
<b>Service Payment</b>	For performance of Contractor's obligations during the Service Period, Contractor is entitled to a monthly Service Payment. As part of its Proposal, Contractor will bid unit prices for various mileage bands. For each Trainset, the Service Payment is calculated by multiplying the unit price for the applicable mileage band (based on the average mileage per Trainset) by the total number of miles for the Trainset by a time factor during the month at issue. The time factor is as follows:

	<table border="1"> <thead> <tr> <th>Time</th><th>Factor</th><th>Time</th><th>Factor</th></tr> </thead> <tbody> <tr> <td>Year 0-5</td><td>1.0</td><td>Year 17-20</td><td>1.0</td></tr> <tr> <td>Year 6-10</td><td>1.3</td><td>Year 21-25</td><td>1.3</td></tr> <tr> <td>Year 11-16</td><td>1.6</td><td>Year 26+</td><td>1.6</td></tr> </tbody> </table>	Time	Factor	Time	Factor	Year 0-5	1.0	Year 17-20	1.0	Year 6-10	1.3	Year 21-25	1.3	Year 11-16	1.6	Year 26+	1.6				
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	<p>The Service Payment is subject to annual escalation. No such regular monthly payment will include payment for Mid-Life Overhaul. The Service Payment is subject to reductions as provided below.</p>																				
<b>Trainset Mid-Life Overhaul (MLO) Amount</b>	<p>A separate MLO payment will be made by Authority at or around year 14 of each Fleet after relevant work has been performed on a per Trainset basis (Trainset MLO Amount). Contractor will bid an aggregate Trainset MLO Amount for Fleet 1 . The Trainset MLO Amount for any subsequent Fleet is based on the Trainset MLO Amount unit prices bid by Contractor multiplied by the number of Trainsets in the Fleet.</p> <p>The Trainset MLO Amount for each Fleet is subject to escalation, except if the Authority orders a Fleet after [December 31, 2030], the Trainset MLO Amount for that Fleet is subject to negotiation.</p>																				
<b>Performance-Based Payment Reductions – Performance Standards</b>	<p>Service Payments will be reduced for Contractor's failure to meet specified Performance Standards. Contractor will be assessed reductions in Service Payments for exceeding the allowable number of Missed Trips, Late Trips and Mission Quality Failures over 10-day, 30-day, 90-day and 180-day measurement periods.</p> <table border="1"> <thead> <tr> <th>Reduction per occurrence (in excess of allowable number)</th><th>Missed Trips</th><th>Late Trips</th><th>Mission Quality Failures</th></tr> </thead> <tbody> <tr> <td>10-day</td><td>\$24,500</td><td>\$615</td><td>N/A</td></tr> <tr> <td>30-day</td><td>\$29,000</td><td>\$615</td><td>N/A</td></tr> <tr> <td>90-day</td><td>\$38,000</td><td>\$615</td><td>\$12,200</td></tr> <tr> <td>180-day</td><td>\$48,000</td><td>\$615</td><td>[To be determined]</td></tr> </tbody> </table> <p>A Missed Trip is a trip that, due to a failure, either (i) does not start or (ii) if it does start, is not completed by a Trainset under its own power.</p> <p>A Late Trip is a trip that, due to a failure, arrives at a station or specified interface point later than is allowed under the Contract (either 300, 150 or 120 seconds late).</p> <p>A list of failures to be used to measure Mission Quality will be developed by Contractor for the Authority's approval. The list will include, but not be limited to: (a) failure of the HVAC system in any car; (b) failure of lighting within a car; (c) failure of a toilet resulting in its being locked out of service; and (d) failure of the pressure sealing in any car.</p> <p>If the number of Missed Trips, Late Trips and Mission Quality Failures exceed specified thresholds below (Missed Trips, Late Trips and Mission Quality Failures</p>	Reduction per occurrence (in excess of allowable number)	Missed Trips	Late Trips	Mission Quality Failures	10-day	\$24,500	\$615	N/A	30-day	\$29,000	\$615	N/A	90-day	\$38,000	\$615	\$12,200	180-day	\$48,000	\$615	[To be determined]
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	<p>counted separately), the Authority may elect to discontinue the assessment of reductions in the Service Payment and pursue actual damages:</p> <ul style="list-style-type: none"> <li>(i) 10-Day Measurement Period – 36 instances (Late Trips and Missed Trips counted separately);</li> <li>(ii) 30-Day Measurement Period – 12 instances (Late Trips and Missed Trips counted separately);</li> <li>(iii) 90-Day Measurement Period – 4 instances (Late Trips, Missed Trips and Mission Quality Failures counted separately); or</li> <li>(iv) 180-Day Measurement Period – 1 instance (Late Trip, Missed Trip or Mission Quality Failure).</li> </ul> <p>Service Payment reductions will not be assessed to the extent Contractor can establish that the Authority, the Trainset operator, a third party or a Force Majeure Event is wholly responsible for the Late Trip, Missed Trip or Mission Quality Failure.</p> <p>Contractor may be entitled to relief from 50% of any Service Payment reduction assessed due to Missed Trips or Late Trips with respect to the 10-day measurement period upon achieving specified improvement.</p> <p>The Service Payment reduction amounts are subject to escalation on an annual basis.</p>
<b>4. Description of Work</b>	
<b>General Description of Work</b>	Contractor will design, manufacture, test, certify and commission Trainsets ordered by the Authority, maintain those Trainsets for 30 years, build necessary Maintenance Facilities and provide all Spares for such Trainsets, all in accordance with the Performance Specification, the Baseline Program, the Quality Plan, the Safety Plan, the Testing and Commissioning Program, all applicable laws, and all other Contract requirements.
<b>Maintenance Facilities</b>	<p>Contractor is required to own and/or contract for sufficient Maintenance Facilities to perform its maintenance obligations. Contractor's Proposal, Maintenance Plan and Baseline Program will identify all such facilities and/or contracts, including the timing for constructing each facility.</p> <p>One of the Maintenance Facilities will be a facility for the performance of Trainset overhauls, and that facility will be located on the Central Valley Segment. Two other Maintenance Facilities will be facilities for stabling, inspection and running repairs. The Maintenance Facilities (if built by Contractor) will be located on Authority-Provided Property.</p> <p>At the conclusion of the Service Period or termination of the Contract, Contractor will transfer the Maintenance Facilities, including equipment but excluding hand tools and portable equipment, constructed on Authority-Provided Property, to the Authority. All such Maintenance Facilities and equipment must be turned over to the Authority in a state of good repair.</p> <p>The Maintenance Facilities will include crew facilities for the Trainset operator and stabling facilities for the Trainsets. Contractor will provide wreck and rescue crews at the Authority's option.</p>

	<p>Contractor will provide all track, signaling and other infrastructure for the Maintenance Facilities. Contractor will overlay its own signaling and communications systems on the Transfer Track along with the mainline signaling and communications systems provided by the Authority.</p> <p>Contractor will provide and maintain one driving simulator and a classroom facility for training purposes at any of Contractor's Maintenance Facilities. Contractor will propose a comprehensive set of training scenarios for the simulator, subject to the Authority's review.</p> <p>Any maintenance contracts will be assignable to the Authority.</p>
<b>Authority-Owned Spares and Special Tools</b>	<p>Authority-Owned Spares are Spares that are identified by the Authority as Authority-Owned Spares and made available by Contractor for use by the Authority. Contractor is required to store Authority-Owned Spares separately from other Spares in Contractor's inventory. Payment for the initial quantity of Authority-Owned Spares is covered by a separate milestone payment for Fleet 1. The Authority may purchase additional Authority-Owned Spares at unit prices provided in Contractor's Proposal (subject to audit by the Authority).</p> <p>The Maintenance Plan must include a system by which, when Spares are needed, Contractor uses and subsequently replaces Spares from the inventory of Authority-Owned Spares with enough frequency to ensure that Authority-Owned Spares are kept up to date and in serviceable condition. Each time Contractor uses an Authority-Owned Spare pursuant to this system, Contractor will immediately replace the Authority-Owned Spare with a Spare from its own inventory of Spares, at no additional cost to the Authority.</p> <p>Contractor will produce required Special Tools at no additional charge with Fleet 1. The Authority may purchase additional Special Tools at unit prices provided in Contractor's Proposal (subject to audit by the Authority). If there is a design change in the Trainsets, Contractor will deliver any additional Special Tools to accommodate the design change at no additional charge and update the list of Spares and Special Tools and associated unit prices.</p> <p>Contractor will store and manage the Authority-Owned Spares until such time as they are used.</p>
<b>Design Responsibility and Liability</b>	<p>Contractor will be solely responsible for designing the Trainsets, and for performing all other design activities related to the Work. Contractor will be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by Contractor.</p> <p>Contractor will not be relieved of its obligation to design and perform the Work by oversight, spot checks, assessments, reviews, tests, inspections, acceptances, statements of no objection, statements of objection, approvals, or by any failure of any individual or entity to take such action.</p>
<b>Testing and Commissioning</b>	<p>Contractor is required to develop the Testing and Commissioning Program in accordance with the Contract.</p>
<b>Service Period</b>	<p>For a 30-year period for each Trainset ordered by the Authority, Contractor is required to:</p> <ol style="list-style-type: none"> <li>1. Maintain the Trainset so that it is fit for safe and efficient operation in regular service and otherwise meets the Contract requirements;</li> <li>2. Operate and maintain the Maintenance Facilities, as necessary to meet the</li> </ol>

	<p>Contract requirements;</p> <ol style="list-style-type: none"> <li>3. Provide all Spares, as necessary to meet the Contract requirements;</li> <li>4. Provide training to the Trainset operator's training staff, set parameters for competency testing, and otherwise provide technical support to the Trainset operator;</li> <li>5. Update and maintain the driving simulator;</li> <li>6. Interface with and obtain direction from the Trainset operator regarding Trainset operations, including the required number of Trainsets to be dropped off and picked up at each Transfer Track;</li> <li>7. Investigate all failures / incidents relating to the operation of the Trainsets in regular service (including those failures / incidents caused by the Trainset operator), assess what occurred, describe any recommended repair or replacement Work necessary, including the provision of Spares, plan an optimal manner to accomplish such Work and report its findings to the Authority;</li> <li>8. Meet the minimum Mean Time between Service Interruptions (MTBSI) requirements for each Trainset and each Fleet;</li> <li>9. Upon Trainset operator's request, provide Trainset operator technical support related to the Trainsets and any Spares;</li> <li>10. Meet the minimum standards of performance for Contractor set forth in the Performance Standards (allowable number of Late Trips, Missed Trips and Mission Quality Failures); and</li> <li>11. Commence any corrective Work, including any required replacement of Spares, within 24 hours after becoming aware of the need for the corrective Work, and complete the corrective Work in accordance with the timeframe and other requirements set forth in the Maintenance Plan.</li> </ol> <p>The 30-year Service Period applicable to each Trainset commences upon the Authority's issuance of a Certificate of Final Acceptance for the Trainset, provided that in no event will the Service Period for a Trainset in Fleet 1 commence prior to the earlier of (a) the Authority's issuance of a Certificate of Final Acceptance for four Trainsets or (b) the commencement of timetabled (revenue) service.</p>
<b>Project Management Plan</b>	<p>Contractor will establish and implement a comprehensive Project Management Plan. The Project Management Plan is required to be developed in accordance with the quality management system requirements of ISO 9001, FTA's guidance regarding project management plans and the Project Management Institute's project management standards.</p> <p>Contractor will review, update or correct the Project Management Plan, and all programs, plans, manuals and training materials developed pursuant to the Project Management Plan at any tier, on a quarterly basis, or more often if updates are required as a result of an audit or if otherwise required by the Authority.</p>
<b>Applicable Laws and Draft Tier III Rule</b>	<p>Contractor will comply with all applicable laws that bear on the performance of the Work, provided that Contractor will be entitled to relief as described in Section 6 below.</p> <p>With respect to the draft Tier III Rule published by the FRA, the following will apply:</p> <ol style="list-style-type: none"> <li>1. If the subject matter of the draft Tier III Rule is not addressed by applicable law, including by a final Tier III Rule or a Rule of Particular Applicability,</li> </ol>

	<p>Contractor will comply with the draft Tier III Rule;</p> <ol style="list-style-type: none"> <li>2. If the subject matter of the draft Tier III Rule is addressed in whole by applicable law, including by a final Tier III Rule or a Rule of Particular Applicability, Contractor will comply with such applicable law;</li> <li>3. If the subject matter of the draft Tier III Rule is addressed in part by applicable law, including by a final Tier III Rule or a Rule of Particular Applicability, for those elements of the draft Tier III Rule that are addressed by applicable law, Contractor will comply with such applicable law, and for those elements of the draft Tier III Rule that are not addressed by applicable law, Contractor will comply with the draft Tier III Rule; and</li> <li>4. The draft Tier III Rule will supersede Tier I and Tier II Rules that address the same subject matter.</li> </ol>
<b>Applicable Standards</b>	Contractor will comply with the current version of all standards referenced in the Contract, provided that (a) with respect to the manufacturing of Fleet 1, the version of such standards in place 30 days prior to the Proposal due date (or submission of a revised Proposal or best and final offer, if later) will apply, and (b) if the Contract references a specific version or date for a standard, that version will apply to all Fleets.
<b>Bicycle Storage</b>	Bicycle storage shall be provided to accommodate a minimum of 8 bicycles per trainset, in a maximum of two dedicated bicycle storage areas per trainset to reduce inconvenience to passengers. Bicycle storage areas shall be separate from wheelchair spaces and shall not block or otherwise impede emergency egress and access.
<b>5. Commencement of Work; Completion Deadlines</b>	
<b>Notice to Proceed / Preliminary Notices</b>	<p><b>Preliminary Notices</b></p> <p>Before the Authority issues a Notice to Proceed (or Limited Notice to Proceed) for a Fleet, it will issue to Contractor a preliminary notice indicating its intent to issue a Notice to Proceed (or Limited Notice to Proceed) for that Fleet. Upon receipt of the preliminary notice, Contractor will submit for the Authority's approval Contractor's determination of the applicable escalated payment amounts.</p> <p>The Authority will issue a preliminary notice for Fleet 1 no later than one year after Contract execution.</p> <p>The Authority may, in its sole discretion, issue a preliminary notice for subsequent Fleets any time after Notice to Proceed for Fleet 1 and no later than [December 31, 2035].</p> <p><b>Limited Notice to Proceed</b></p> <p>The Authority, at its option, may issue a Limited Notice to Proceed. The Limited Notice to Proceed will include a cap on the Authority's total payments, including any milestone payments and termination for convenience payments. In addition, if the Authority terminates the Contract for convenience under the Limited Notice to Proceed, the Authority will only be responsible for termination costs and expenses that the Authority has approved before the termination.</p> <p><b>Notice to Proceed</b></p> <p>The Authority will issue a Notice to Proceed (or Limited Notice to Proceed) for a Fleet within 180 days after the Authority issues a preliminary notice for the Fleet.</p>

	Contractor will not proceed with any Work under the Contract without a written Notice to Proceed (or Limited Notice to Proceed) for such Work.
<b>Prerequisites for Commencement of Work under a Notice to Proceed</b>	<p>Contractor may not commence any Work under a Notice to Proceed until the following conditions are satisfied and Contractor has provided notice to the Authority that the conditions are satisfied:</p> <ol style="list-style-type: none"> <li>1. All governmental approvals necessary for the Work covered by the Notice to Proceed have been obtained and all conditions of such governmental approvals that are a prerequisite to commencement of the Work covered by the Notice to Proceed have been performed;</li> <li>2. All insurance policies required to be delivered to the Authority under the Contract for the Fleet at issue have been submitted to the Authority and remain in full force and effect;</li> <li>3. Contractor has provided to the Authority an irrevocable letter of credit to secure Contractor's obligations under the Contract (see Section 7 below); and</li> <li>4. Contractor has provided to the Authority an executed Guaranty (see Section 7 below).</li> </ol>
<b>Trainset Acceptances</b>	<p>Trainset Acceptance includes Provisional Acceptance, Conditional Acceptance and Final Acceptance.</p> <p>Contractor is required to obtain a Certificate of Provisional Acceptance for each Prototype Trainset.</p> <p>Contractor is required to obtain a Certificate of Final Acceptance for each Trainset within a Fleet by the Trainset Acceptance deadline for the Fleet, as follows:</p> <ol style="list-style-type: none"> <li>1. Fleet 1: 72 months after Notice to Proceed;</li> <li>2. Additional Fleets (in production): one month per Trainset in the Fleet; and</li> <li>3. Additional Fleets (not in production): 12 months plus one month per Trainset in the Fleet.</li> </ol>
<b>6. Change Orders</b>	
<b>Change Orders</b>	<p>An Authority signed Change Order is required for any time extension or price increase. The Authority may at any time issue a unilateral directive letter and Contractor will proceed immediately with the Work as directed in the directive letter, pending the execution of a formal Change Order (or, if the directive letter states that the Work is within the original scope of the work, Contractor will proceed with the Work as directed but will have the right pursuant to the disputes provision to request that the Authority issue a Change Order with respect to the directive letter).</p> <p>Contractor may request a Change Order for a time extension or price increase only "but for" those circumstances that the Contract expressly contemplates that a Change Order is permitted. Time extensions will only be available with respect to a particular Fleet up until the point of the Authority's issuance of a Certificate of Fleet Acceptance.</p> <p>Change Orders are limited to the following circumstances (and no others):</p> <ol style="list-style-type: none"> <li>1. Authority-directed changes, including any Authority order of additional Authority-Owned Spares and Special Tools (above the baseline amount) and use of Contractor's wreck and rescue crews;</li> <li>2. Authority Delay (unavoidable delays arising from (a) uncovering, removing and</li> </ol>

	<p>restoring Work, to the extent the Authority had an opportunity to inspect the Work and the Work was in conformance with the Contract requirements; (b) the Authority's failure to provide responses to submittals for which response by the Authority is required by a response deadline; (c) the Authority's failure to provide Contractor with access to the Test Track by the deadline; (d) the Authority's failure to achieve Track Connectivity between the Northern and Central Valley Segments by the deadline; (e) Authority's failure to provide characteristics of its mainline signaling and communications systems by the deadline; (f) the Authority's failure to provide the Authority-Provided Property by the deadline; (g) Authority's failure to provide the required freight rail connections to the Authority-Provided Property by the deadline; (h) Authority's failure to provide track and mainline signaling and communication systems for a Transfer Track by the deadline; and (i) Authority's failure to provide an Authority-owned site where Trainsets can be stabled and light cleaning can be performed in the Northern segment by the deadline);</p> <ul style="list-style-type: none"> <li>3. Certain changes in applicable laws (described under a separate entry below);</li> <li>4. Force Majeure Events, which are limited to the following, provided the event is out of Contractor's control and is wholly responsible for Contractor's failure to perform: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Work; (b) embargoes instituted by a governmental entity; (c) any act of riot, insurrection, civil commotion or sabotage that causes direct physical damage to the Work; (d) nuclear explosion, radioactive or chemical contamination of the site, unless the source of the explosion, contamination, radiation or contaminated material is brought to or near the site by Contractor; (e) fire, explosion, earthquake, floods and landslides caused by natural events, or tidal wave; (f) terrorism; or (g) any governor-declared emergency within the limits of the site;</li> <li>5. Suspensions of Work for convenience;</li> <li>6. Issuance of a temporary restraining order or other form of injunction that prohibits prosecution of a material portion of the Work;</li> <li>7. Contractor's provision of maintenance or Spare(s) that are needed to fulfill the Contract requirements, to the extent Contractor can establish that the Authority, Trainset operator or a third party is wholly responsible for such damage (e.g., damage caused because Trainset operator did not properly follow Contractor's operation manual); and</li> <li>8. Contractor shuts down the Trainset production line in between Fleet orders for more than 180 days after providing 30 days written notice to the Authority.</li> </ul> <p>The Authority is entitled to a Change Order for Force Majeure Events pursuant to the same conditions applicable to Contractor above, upon written notice to Contractor.</p>
<b>Relief for Changes in Applicable Laws</b>	<p>Contractor will be entitled to a time extension and price increase or the Authority will be entitled to a time decrease or price decrease, as applicable, based on:</p> <ol style="list-style-type: none"> <li>1. A change to applicable laws, except for changes addressed under clause 2 below, after the date that is 30 days prior to the Proposal due date or, if later, the date that is 30 days prior to submission of a revised Proposal or best and final offer, if any, provided one of the following conditions is met:</li> </ol>

	<p>(a) the change requires physical rework to Trainsets that have already achieved Final Acceptance; or</p> <p>(b) the change is both (i) a Discriminatory Change (a change that is principally directed at and the effect of which is principally borne by Contractor or operators of high-speed rail in California, except where the change (x) is in response to any failure to perform or culpable act / omission of Contractor, (y) is a directive by the U.S. Department of Homeland Security or comparable state agency, unless it is directed solely at or solely affects the Work and requires specific changes to the design or manufacturing procedures in order to comply or (z) is expressly contemplated under the Contract) and (ii) affects the physical Work; or</p> <p>2. To the extent the cost of, and/or the time required for, performance of the Work materially increases or decreases because of differences between (i) applicable laws, including requirements in a final Tier III Rule or a Rule of Particular Applicability and (ii) the draft Tier III Rule (except increases required as a result of Contractor-initiated changes to the Project) provided such differences affect the physical Work.</p>
<b>Limitation on Contract Amount Increases</b>	<p>Any increase in the Contract Amount will exclude:</p> <ol style="list-style-type: none"> <li>Costs caused by breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity (Contractor, entities forming Contractor (e.g., joint venture members), Subcontractors, their employees, agents and officers and all other individuals and entities for whom Contractor may be legally or contractually responsible).</li> <li>Costs that could reasonably have been avoided by Contractor, including by resequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).</li> <li>Costs for (i) any rejected Work that failed to meet the requirements of the Contract and (ii) any necessary remedial Work.</li> </ol>
<b>Limitation on Time Extensions</b>	<p>Any extension of a completion deadline will exclude any delay to the extent that:</p> <ol style="list-style-type: none"> <li>Did not impact the Critical Path affecting a Trainset Acceptance deadline.</li> <li>Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity.</li> <li>Could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves an Authority Delay, the Authority shall have agreed, if requested to do so, to reimburse Contractor for its costs incurred, if any, in resequencing, reallocating, or redeploying its forces).</li> <li>Was concurrent with any other delay for which Contractor is not entitled to a time extension.</li> </ol> <p>Contractor will be required to demonstrate to the Authority's satisfaction that the change in the Work or other event or situation which is the subject of a Change Order seeking a time extension has caused or will result in an identifiable and measurable delay of the Work which has impacted the Critical Path.</p>
<b>Delay Damages and</b>	Contractor is entitled to reimbursement of delay damages only for the following:

<b>Disruption Damages</b>	<p>(a) a written order from the Authority designated to be a directive letter; (b) the Authority's suspension of the Work for convenience; or (c) the Authority Delay.</p> <p>Delay damages are limited to additional field office and jobsite overhead costs, including onsite storage costs, incurred by Contractor directly attributable to the delay resulting in a time extension. Home office overhead is excluded from delay damages and not compensable. Before Contractor may obtain any price increase to compensate for any delay damages, Contractor must demonstrate to the Authority's satisfaction that:</p> <ol style="list-style-type: none"> <li>1. The Baseline Program (project schedule) in fact sets forth a reasonable method for completion of the Work.</li> <li>2. The change in the Work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable delay of the Work and impact the Critical Path.</li> <li>3. The delay damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).</li> <li>4. The delay for which compensation is sought is not concurrent with any other delay for which Contractor is not entitled to delay damages.</li> <li>5. Contractor has suffered or will suffer actual costs due to such delay, each of which costs must be documented in a manner satisfactory to the Authority.</li> </ol> <p>Disruption damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable. Disruption damages include costs of (i) rearranging Contractor's Work plan not associated with a time extension and (ii) loss of efficiency, momentum or productivity.</p>
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## 7. Security, Indemnities, Insurance, Risk of Loss

<b>Performance Security</b>	<p>Manufacturing Security - For each Fleet, Contractor will provide and maintain until five years after Fleet Acceptance for the Fleet, an irrevocable letter of credit. From the date the letter of credit is issued until Provisional Acceptance of the first Trainset in the Fleet, the amount of the letter of credit will be 25% of the Manufacturing Amount for the Fleet. From the date of Provisional Acceptance of the first Trainset in the Fleet until Final Acceptance of the first Trainset in the Fleet, the amount of the letter of credit will be 50% of the Manufacturing Amount for the Fleet. From the date of Final Acceptance of the first Trainset in the Fleet until 5 years after Fleet Acceptance for the Fleet, the amount of the letter of credit will be 20% of the Manufacturing Amount for the Fleet.</p> <p>Maintenance Security - For each Fleet, from the date of Fleet Acceptance until 30 years after Fleet Acceptance, Contractor will provide and maintain a bond or irrevocable letter of credit. The amount of the bond or letter of credit will be calculated according to a formula that increases or decreases the bond or letter of credit amount to reflect the anticipated maintenance activities.</p> <p>Contractor may provide multiple letter(s) of credit for shorter durations on condition of providing the required amounts of security during the specified time periods and providing replacement letter(s) of credit prior to expiration.</p>
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<b>Payment Bond</b>	A Payment Bond will be required in the amount of 100% of the cost of Maintenance Facilities on Authority-Provided Property during construction of the Maintenance Facilities.
<b>Guaranty</b>	<p>The ultimate parent company of Contractor (or if Contractor consists of a consortium, partnership or joint venture, the ultimate parent company of each member, partner or joint venturer) will be required to provide a guaranty for each Fleet ordered by the Authority. The guaranty will assure performance of all obligations of Contractor under the Contract with respect to that Fleet. The guarantor must agree to be sued in California.</p> <p>The guaranties must be maintained in full force and effect from Notice to Proceed to five years after Fleet Acceptance.</p>
<b>Indemnities</b>	<p>Contractor will defend, indemnify and hold harmless the Authority and its respective officers, directors, employees, agents, servants, representatives, consultants, successors, assigns and subsidiaries from and against any third party claims, losses, liabilities (including without limitation environmental liabilities), penalties, fines, demands, causes of action, suits, judgments, investigations, legal or administrative proceedings, costs and expenses incidental thereto (including costs of defense and attorney's fees) arising out of or relating to or resulting from:</p> <ol style="list-style-type: none"> <li>1. Any errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects in the design documents furnished by Contractor, regardless of whether such errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects were also included in documents provided by the Authority, if any;</li> <li>2. The breach or alleged breach of or failure or alleged failure to perform the Contract or any subcontract thereunder by any Contractor-Related Entity;</li> <li>3. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable law;</li> <li>4. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct, or fault, of any Contractor-Related Entity;</li> <li>5. The (a) injury, or death of any person, including any of Contractor's employees, agents or Subcontractors, or (b) damage to or loss (including loss of use) of any private party, including property of the Parties hereto, arising out of or in any degree directly or indirectly caused by or resulting from supplies, material, Deliverables, products or equipment supplied by, or from activities of, or Work performed by any Contractor-Related Entity;</li> <li>6. Any service or design, or product called for in any service or design, provided by any Contractor-Related Entity that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret or other proprietary right of a third party;</li> <li>7. Any and all claims by any governmental entity claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Contractor-Related Entity with respect to any payment for the Work made to or earned by such Contractor-Related Entity under the Contract;</li> <li>8. Any and all stop notices and/or liens filed in connection with the Work, including all expenses and attorney's fees incurred in discharging any stop notice or lien, provided that Authority is not in default in payment owing to</li> </ol>

	<p>Contractor with respect to such Work;</p> <p>9. Any release or threatened release of Hazardous Materials brought onto the site by any Contractor-Related Entity or where the removal or handling of Hazardous Materials involved negligence, willful misconduct, or breach of Contract by any Contractor-Related Entity; or</p> <p>10. Any interference with or hindering of the progress or completion of Work being performed by, or failure to cooperate reasonably with, third parties.</p>
<b>Insurance</b>	<p>Contractor is required to provide the following insurance:</p> <ol style="list-style-type: none"> <li>1. Workers' Compensation and Employer's Liability Insurance at statutory limits, including not less than \$1,000,000 for each accident.</li> <li>2. Commercial General Liability Insurance. Annual limit of not less than \$2,000,000 per occurrence, \$4,000,000 aggregate and \$4,000,000 products and completed operations aggregate.</li> <li>3. Automobile Liability Insurance. The minimum combined single limit for primary coverage is \$1,000,000 per occurrence.</li> <li>4. Railroad protective liability coverage, with coverage forms and policy limits as required by the railroad.</li> <li>5. Professional Liability Insurance with limits of not less than \$25,000,000 per claim and in the aggregate.</li> <li>6. Excess/Umbrella Liability Insurance of not less than \$200,000,000 per occurrence and in the aggregate in excess of the above underlying coverages.</li> </ol>
<b>Risk of Loss</b>	<p>Contractor is responsible for risk of loss of mock-ups, aesthetic design concepts and interior layout concepts for the Trainsets until delivery to and acceptance by the Authority.</p> <p>Contractor is responsible for the risk of loss of a Trainset at all times except for the periods after Final Acceptance where Contractor has handed custody and control of the Trainset to the Trainset operator.</p> <p>Contractor is responsible for risk of loss of the driving simulator, Authority-Owned Spares, other Spares, Special Tools and the Maintenance Facilities at all times.</p> <p>Contractor is responsible for risk of loss of all other deliverables upon delivery to and acceptance by the Authority.</p>
<b>8. Defaults, Remedies, Suspensions, Terminations</b>	
<b>Breaches and Cure Periods</b>	<p>Contractor will be in breach under the Contract upon occurrence of any one or more of the following:</p> <ol style="list-style-type: none"> <li>1. Contractor fails to deliver Trainsets within the time specified in the Contract.</li> <li>2. Contractor fails to make progress, so as to endanger timely performance under the Contract.</li> <li>3. Contractor fails or refuses to complete the Work within the time specified in the Contract.</li> <li>4. Contractor fails, without cause, to make prompt payments to Subcontractors or to make prompt payment for equipment, materials, and/or labor.</li> <li>5. Contractor noncompliance with applicable laws or the proper instruction of the Authority.</li> <li>6. Contractor fails to make any payments due to the Authority under the</li> </ol>

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|  | <p>Contract.</p> <ol style="list-style-type: none"> <li>7. Contractor fails to provide and maintain the payment bond as required under the Contract.</li> <li>8. Contractor fails to submit the required performance bond, irrevocable letter(s) of credit and guaranties required under the Contract and keep such performance bond, letter(s) of credit and guaranties in full force and effect as required under the Contract.</li> <li>9. Contractor fails to submit and maintain the insurance required under the Contract.</li> <li>10. Contractor transfers any interest in the Contract without the approval of the Authority.</li> <li>11. Contractor fails to comply with the terms of a directive letter.</li> <li>12. Contractor fails to comply with a suspension of Work notice by the Authority.</li> <li>13. Contractor or any Guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debt, or makes an assignment for the benefit of creditors.</li> <li>14. Contractor or any Guarantor dissolves or liquidates.</li> <li>15. Contractor or any Guarantor commences a voluntary case seeking liquidation, reorganization or other relief related to Contractor or Guarantor or their debts under any U.S. or foreign bankruptcy, insolvency or other similar law.</li> <li>16. An involuntary case is commenced against Contractor or Guarantor seeking liquidation, reorganization, dissolution, winding up or other relief related to Contractor or Guarantor or their debts under any U.S. or foreign bankruptcy, insolvency or other similar law and have not been dismissed or stayed within 60 days.</li> <li>17. Contractor or Guarantor seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets.</li> <li>18. Any material representation or warranty made by Contractor or any Guarantor in the Contract or in any certificate, schedule, instrument or other document delivered pursuant to the Contract is false or materially misleading when made.</li> <li>19. Any Guarantor revokes or attempts to revoke its obligations under its Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect.</li> <li>20. Failure to commence corrective Work, including any required replacement of Spares, within 24 hours after becoming aware of the need for the corrective Work, and to complete the corrective Work in accordance with the Maintenance Plan.</li> <li>21. Contractor fails to comply with any other provision of the Contract.</li> </ol> <p>The Authority will provide Contractor 30 days written notice and opportunity to cure breaches (1) through (10) and (21) above before declaring an event of default. If a breach is curable, but by its nature cannot be cured within the 30 day period, as determined by the Authority, the Authority will not declare an event of default provided that Contractor commences cure within such 30-day period and thereafter diligently prosecutes such cure to completion. Unless approved in</p> |
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	writing by Authority in its sole discretion, in no event will such cure period exceed 180180 days in total. The Authority will provide Contractor five days written notice and opportunity to cure the breach listed in (11) above before declaring an event of default. There will be no cure period with respect to breaches (12) through (20) above. In addition, notwithstanding the above, there will be no cure period to the extent the breach relates to Work during the Service Period.
<b>Authority Remedies</b>	<p>The Authority's remedies include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. The Authority may reject any non-conforming Work or require Contractor to remedy non-conforming Work at Contractor's cost and without a time extension.</li> <li>2. The Authority may remedy any default and charge the cost to Contractor.</li> <li>3. If the Authority determines that a Trainset is unfit for safe and efficient operation, the Authority can require Contractor to propose a plan, subject to the Authority's approval, to remedy the problem (e.g., through remanufacturing, replacement of systems or provision of a new Trainset), and implement that plan at no additional cost to the Authority.</li> <li>4. If the Authority determines that three or more Trainsets in a Fleet are unfit for safe and efficient operation in regular service, the Authority can require Contractor to propose and implement a plan, subject to the Authority's approval, to remedy the problem in the entire Fleet (e.g., through remanufacturing, replacement of systems or provision of new Trainsets) at no additional cost to the Authority.</li> <li>5. If, over 30 consecutive days or 100 cumulative days of operations, a particular Trainset does not meet the Contractor's RAMS Commitment in its Proposal, the Authority reserves the right to require Contractor to provide a new Trainset to replace the Trainset that could not meet the RAMS Commitment, at no additional cost to the Authority.</li> <li>6. If, over 30 consecutive days or 100 cumulative days of operations, a Trainset fails to meet the minimum mean time between service interruptions (MTBSI) of 2,288 hours (or higher if proposed by Contractor in its Proposal), the Authority may require Contractor to re-manufacture the Trainset.</li> <li>7. If cumulative defects or failures of any kind in substantially identical components or systems within the Trainsets serving substantially similar functions exceed 10%, Contractor will develop and implement a Modification Program, subject to the Authority's approval, that addresses the issue in all affected components or systems in all Trainsets within the Fleet, all at no additional cost to the Authority.</li> <li>8. If Contractor fails to maintain the required insurance, the Authority may procure or renew such insurance and pay any and all premiums in connection therewith, with Contractor being responsible to pay the Authority for such expenses or the Authority offsetting those expenses from funds otherwise due Contractor.</li> <li>9. If there is a material default, the Authority may terminate the Contract in whole or in part, and, if the Authority issued less than four Certificates of Final Acceptance for Trainsets, Contractor will be liable for repayment to the Authority of any payments made by the Authority.</li> </ol> <p>The rights and remedies of the Authority provided for under the Contract are in</p>

	<p>addition to any other rights and remedies provided by law.</p>
<b>Termination for Convenience</b>	<p>The Authority may, in its sole discretion and upon 15 days written notice to Contractor, terminate the Contract, in whole or in part, for the convenience of the Authority.</p> <p>Upon Contractor's compliance with certain requirements, the Authority will pay Contractor termination expenses in the event of a termination for convenience, which will be, if appropriate and reasonable, an amount equal to the total of (without duplication):</p> <ol style="list-style-type: none"> <li>1. All amounts due, and not previously paid to Contractor, for Work authorized and completed in accordance with the Contract prior to the date of termination, provided that:       <ul style="list-style-type: none"> <li>o For any Fleet for which the Authority has issued an Notice to Proceed but has not reached Fleet Acceptance, Contractor will be entitled to Contractor's actual costs incurred towards reaching the Milestones for that Fleet, plus a 15% markup, minus any milestone payments previously paid for that Fleet, provided that such amount must not exceed the sum of all milestone payments for that Fleet;</li> <li>o For any Service Payment due for the month of termination, the Authority will pay for the month at issue reduced pro rata to reflect the portion of the month terminated; plus</li> </ul> </li> <li>2. Contractor's cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract (settlement costs include accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data); plus</li> <li>3. Contractor's expenses incurred for demobilization; plus</li> <li>4. 10% of item 2 and item 3 for overhead and profit; plus</li> <li>5. Contractor's reasonable expenses incurred in fulfilling its obligations under the Contract in respect of termination; less</li> <li>6. The amount of any claim which the Authority may have against any Contractor-Related Entity in connection with the Contract; less</li> <li>7. Amounts that the Authority reasonably deems advisable to retain to cover any existing or threatened claims, liens and stop notices relating to the Project, including claims by third parties, less</li> <li>8. The costs of repairing any non-conforming Work; less</li> <li>9. Any Performance-Based Payment Reductions assessed by Authority but not yet deducted from a payment to Contractor; less</li> <li>10. Any amounts due or payable by Contractor to the Authority, including any liquidated damages; less</li> <li>11. Any costs saved by Contractor as a result of the termination.</li> </ol> <p>The termination expenses must not exceed the total Contract Amount for all Fleets ordered by the Authority as reduced by (i) the amount of payments otherwise made by the Authority to Contractor prior to the date of termination and (ii) in the case of a partial termination, the portion of the Contract Amount attributable to the Work not terminated.</p>

	<p>The Authority may terminate the Contract prior to issuance of Notice to Proceed without incurring any cost or liability to Contractor, including termination expenses.</p>
<b>Liquidated Damages – Delay in Trainset Provisional Acceptance and Final Acceptance</b>	<p>Contractor will be assessed liquidated damages for failure to obtain a Certificate of Provisional Acceptance for each Prototype Trainset by the applicable deadlines in the amount of [TO BE PROVIDED].</p> <p>Contractor will be assessed liquidated damages for failure to obtain a Certificate of Final Acceptance for any Trainset within a Fleet by the Trainset acceptance deadline for that Fleet, in the amount of:</p> <ol style="list-style-type: none"> <li>1. \$12,000/day, per Trainset, for up to 90 days of delay;</li> <li>2. \$20,000/day, per Trainset, for between 91 and 180 days of delay; and</li> <li>3. \$38,000/day, per Trainset, for beyond 180 days of delay.</li> </ol> <p>Liquidated damages for failure to obtain a Certificate of Final Acceptance are capped at 10% of the escalated Manufacturing Amount for the Fleet. The liquidated damages are not exclusive, except that the Authority will not have the right to recover any damages it incurs due to Contractor's delay that are in excess of the amount of the liquidated damages.</p> <p>The liquidated damage amounts set forth above are subject to escalation on an annual basis.</p>
<b>Liquidated Damages – Replacement of Key Personnel</b>	<p>Liquidated damages will be assessed for Contractor replacement of the project manager, the lead design engineer or the testing and commissioning engineer without the Authority's approval of the replacement, in the following amount:</p> <ol style="list-style-type: none"> <li>1. \$1,000,000 for each individual removed during the first year after Notice to Proceed for Fleet 1;</li> <li>2. \$500,000 for each individual removed during the second year after Notice to Proceed for Fleet 1;</li> <li>3. \$100,000 for each individual removed during the third year after Notice to Proceed for Fleet 1; and</li> <li>4. \$50,000 for each individual removed during the remaining period of the Contract.</li> </ol> <p>The liquidated damage amounts set forth above are subject to escalation on an annual basis.</p>
<b>Liquidated Damages – Weight Commitments</b>	<p>Each Trainset that receives a Certificate of Conditional Acceptance will be weighed and liquidated damages will be assessed on a one-time basis if one or both of the final certified axle load and final certified unsprung axle load weights for the Trainset exceeds the corresponding weight commitments provided by Contractor in its Proposal. Weighing is a condition to Final Acceptance. The amount of the liquidated damages is:</p> <ol style="list-style-type: none"> <li>1. \$650,000 per tonne, or part thereof on a pro rata basis, for the amount the final certified axle load weight exceeds the weight commitment; and</li> <li>2. \$6,500,000 per tonne, or part thereof on a pro rata basis, for the amount the final certified unsprung axle load weight exceeds the weight commitment.</li> </ol> <p>Authority may elect to re-weigh a Trainset for purposes of determining liquidated damages after any remedy requiring repair or remanufacturing of the Trainset, and the amount of liquidated damages owing, if any, will be adjusted accordingly.</p>

	The liquidated damage amounts are subject to escalation on an annual basis.
<b>Liquidated Damages – Energy Efficiency Commitments</b>	For each Fleet, upon Final Acceptance of 50% of the Fleet, energy efficiency will be assessed based on a validated model submitted by Contractor with its Proposal. The model will measure the energy usage of a Trainset selected from the Fleet by the Authority. Liquidated damages will be assessed if the final certified energy usage measurement from the model, using input data verified during testing and commissioning, exceeds the per-mile net kWh energy usage commitments provided by Contractor in its Proposal. In such case, the amount of liquidated damages will equal \$700,000 for every per-mile kWh, or part thereof on a pro rata basis, for the amount the final certified energy usage measurement exceeds the commitment, multiplied by the number of Trainsets within the Fleet. The liquidated damage amount is subject to escalation on an annual basis.
<b>Suspension</b>	The Authority may order Contractor to suspend all or any part of the Work for the period of time that the Authority deems appropriate. <ol style="list-style-type: none"> <li>1. Suspension for cause. No price/time adjustment will be made for suspensions:               <ul style="list-style-type: none"> <li>- required to correct conditions unsafe for Project personnel or the general public;</li> <li>- required to comply with any governmental approval or applicable law;</li> <li>- required to carry out an order of the Authority duly given; or</li> <li>- required to comply in all respects with the Contract.</li> </ul> </li> <li>2. Suspension for convenience. Contractor will be entitled to a price/time adjustment for suspensions for convenience. In the event of a suspension for convenience for more than 180 consecutive days, Contractor will have the right to consider the Contract to have been terminated for convenience by the Authority.</li> </ol>
<b>Trainset Retirement</b>	The Authority may, in its sole discretion, retire any Trainset in the Service Period by issuing an Authority-directed change to Contractor directing the retirement of the Trainset. The Change Order will address retirement requirements, including continuing obligations during retirement, re-commissioning requirements and payment. Any Trainset retired by the Authority will remain in retirement until and unless the Authority directs Contractor to re-commission the Trainset.
<b>9. Other Contract Provisions</b>	
<b>Settlement of Disputes</b>	The parties will use informal dispute resolution procedures, including partnering, to attempt to resolve disputes without resorting to formal legal processes. Either party may refer the dispute to binding arbitration if the dispute is not resolved through the informal dispute resolution procedure. For a dispute that is appealed to binding arbitration, the parties will seek to appoint a panel of three arbitrators. If the parties cannot agree on a panel, then each party will appoint one arbitrator, who will then select a third arbitrator. The decision of the arbitrators will be binding on the parties and any judgment on the award may be entered in the Superior Court for Sacramento County.
<b>Intellectual Property Rights Granted to</b>	<b>Authority Rights to use Intellectual Property</b> Contractor grants, pays for and delivers to the Authority an irrevocable, perpetual,

<b>Authority</b>	<p>fully paid-up right and license to the applicable intellectual property for:</p> <ul style="list-style-type: none"> <li>(a) the use, maintenance or repair (including wreck repairs) including related equipment acquisitions of any Trainsets that have reached Final Acceptance; and</li> <li>(b) the use, maintenance, repair or manufacture of any deliverables under the Contract, including Spares, Special Tools, the driving simulator, Maintenance Facilities and any related equipment acquisitions, but excluding Trainsets.</li> </ul> <p><b>Delivery of Intellectual Property into Escrow</b></p> <p>Contractor will deliver all applicable intellectual property into escrow, under an Escrow Agreement. Contractor is responsible to pay for and maintain the escrow for the duration of the Contract. Execution of the Escrow Agreement and delivery of the applicable intellectual property into escrow is a condition to Final Acceptance for the first Trainset.</p> <p><b>Subcontractor Intellectual Property Obligations</b></p> <p>Contractor will cause all Subcontractors to:</p> <ol style="list-style-type: none"> <li>1. Secure and deliver written licenses to grant an irrevocable perpetual, fully paid-up right and license to the applicable intellectual property owned by the Subcontractor; and</li> <li>2. Submit and deliver all applicable intellectual property into escrow.</li> </ol> <p><b>Release of Intellectual Property from Escrow</b></p> <p>The applicable intellectual property (including escrowed intellectual property from Subcontractors) is subject to release from escrow due to Contractor's material default of the Contract.</p>
<b>Assignment and Delegation</b>	<p>Contractor must not delegate its responsibility under the Contract and must not assign the Contract, any part of the Contract or any monies due or to become due under the Contract without the prior written consent of the Authority. The Authority will not unreasonably prohibit Contractor from assigning its right to payment, provided that Contractor remains responsible for all its obligations hereunder.</p> <p>The Authority may assign without Contractor's consent all or any portion of the Contract (including the Authority's rights under required insurance policies, letter(s) of credit, guaranties and Change Orders) to any entity, including (i) any entity that is or will be the Trainset operator and its successors and assigns or (ii) any entity succeeding to all or substantially all of Authority's powers and authority of the Authority respecting the high-speed rail system or its operations.</p>
<b>Consequential Damages</b>	<p>Contractor and the Authority will not be liable for punitive damages or special, indirect (e.g., loss of profit or loss of revenues) or incidental consequential damages arising out of contract, tort (including negligence) or any other theory of liability. However, this limitation on liability will not apply to the following:</p> <ul style="list-style-type: none"> <li>• Losses (including defense costs) arising out of the Work and covered by the proceeds of insurance carried by or insuring Contractor;</li> <li>• Losses (including defense costs) of amounts which would have been reimbursed but for Contractor's failure to carry insurance required under the Contract;</li> <li>• Losses (including defense costs) arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence;</li> </ul>

	<ul style="list-style-type: none"> <li>• Contractor or the Authority's indemnities under the Contract;</li> <li>• Performance-Based Payment Reductions assessed by the Authority;</li> <li>• Contractor obligations to pay liquidated damages in accordance with the Contract;</li> <li>• Amounts owing under express provisions of the Contract; and</li> <li>• Losses arising out of releases of Hazardous Materials by Contractor or the Authority.</li> </ul>
<b>Limitation of Contractor's Liability</b>	<p>Contractor's liability to the Authority will be limited to an amount equal to 100% of the Contract Amount. However, excluded from this cap will be:</p> <ul style="list-style-type: none"> <li>• Losses (including defense costs) arising out of the Work and covered by the proceeds of insurance carried by or insuring Contractor;</li> <li>• Losses (including defense costs) of amounts which would have been reimbursed but for Contractor's failure to carry insurance required under the Contract;</li> <li>• Performance-Based Payment Reductions assessed by Authority;</li> <li>• Any liquidated damages under the Contract;</li> <li>• Any type of cost arising from fraud, gross negligence, intentional misconduct or criminal acts of any Contractor-Related Entity;</li> <li>• All costs reasonably incurred by the Authority (minus the unpaid portion of the Contract Amount) in completing the Work or having the Work completed by others; and</li> <li>• All costs reasonably incurred by the Authority or any party acting on the Authority's behalf in correcting the Work or having the Work corrected by others.</li> </ul> <p>The limitation of Contractor's liability above will not affect Contractor's obligation to provide insurance.</p>